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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ADRIANN GEORGES,  
Plaintiff,  
v.  
NOVARTIS PHARMACEUTICALS  
CORPORATION,  
Defendant.

Case No. 2:06-CV-05207-SJO-VBK

**PLAINTIFF ADRIANN GEORGES'  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
HER OMNIBUS MOTION IN  
LIMINE [NO. 1]; EXHIBIT 1**

[Filed concurrently with Notice of Motion and Omnibus Motion [No. 1]; Supporting Declaration of Molly B. Weber; and [Proposed] Order]

Hearing Date: November 27, 2012  
Time: 9:00 a.m.  
Courtroom: 1  
Judge: Hon. S. James Otero

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1 Plaintiff Adriann Georges respectfully submits this memorandum in support  
2 of her motion *in limine* moving this Court for an order excluding all evidence,  
3 references, testimony or argument relating to the various topics set forth below.

4 **A. Any mention or disclosure, whether directly or indirectly, in any  
5 manner, that Plaintiff is covered by some form of insurance for the incident in  
6 question.**

7 Under the collateral source rule, NJSA 2A: 15-97, a tortfeasor has no right to  
8 mitigate damages because of payments or compensation that an injured person has  
9 received from an independent sources. *See Thomas v. Toys "R" Us, Inc.*, 282  
10 N.J.Super. 569 (App.Div. 1995), cert. denied, 142 N.J. 574 (1995); F.R.E. 403, 411.  
11 The tortfeasor has no right to benefit from these collateral payments, and thus  
12 defendant should not be able to reference those types of compensation at trial in an  
13 effort to reduce damages assessed by the jury. Such fact is entirely immaterial to  
14 any issue in this case and any mentioning or inference thereof, directly or indirectly,  
15 in any manner, will be harmful or unjustly prejudicial to the Plaintiff. *See* F.R.E.  
16 403. Any necessary offset can be effectuated by your Honor post-judgment if  
17 necessary. This motion was previously brought in a similar case and granted by  
18 that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al. v. Novartis  
19 Pharms. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct. New Jersey).

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21 **B. Any statement that a verdict for Plaintiff will adversely impact  
22 pharmaceutical companies' incentive/ability to develop new medications.**

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24 Such argument is irrelevant, as it does not make the existence of any  
25 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this  
26 argument constitutes unsupported speculation regarding a very remote topic, and is  
27 likely to involve matters outside the record, including hearsay and double hearsay.

1     See F.R.E. 802. Any comment on the possible effects of an award of damages in  
2     this case would confuse and mislead the jury and waste the court's time. See F.R.E.  
3     403.

4                 Moreover, such argument is highly prejudicial and calculated to inflame the  
5     jury. See F.R.E. 403. Such argument would suggest to the jury that if they were to  
6     side with Plaintiff, pharmaceutical companies would stop developing new  
7     medications which would be detrimental to people's health, including but not limited  
8     to their own. That is an inflammatory claim that has no place in litigation,  
9     especially in light of the current debate on healthcare reform. For these reasons,  
10    this argument should not be mentioned or referenced in front of the jury as it will  
11    greatly prejudice Plaintiff. This motion was previously brought in a similar case  
12    and granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al.*  
13    *v. Novartis Pharms. Corp.), MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct.*  
14    *New Jersey).*

15  
16                 **C. Any comment or inference, or submitting any evidence, testimony**  
17     **or documents tending to suggest in any way that any award of damages in this**  
18     **case will adversely affect the ability of any member of the jury to purchase, or**  
19     **have available medications in the future, or affect the cost thereof, or have any**  
    **adverse effect on the medical, or health products available to individuals or**  
    **industries in the United States or worldwide.**

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21                 Such argument is irrelevant, as it does not make the existence of any  
22     consequential fact more or less probable. See F.R.E. 401-402. Instead, this  
23     argument constitutes unsupported speculation regarding a very remote topic, and is  
24     likely to involve matters outside the record, including hearsay and double hearsay.  
25     See F.R.E. 802. Any comment on the possible effects an award of damages in this  
26     case would confuse and mislead the jury and waste the court's time. See F.R.E.  
27     403.  
28

1       Moreover, such argument is highly prejudicial and calculated to inflame the  
2 jury. *See* F.R.E. 403. Such argument would suggest to the jury that they should  
3 side with Novartis if they do not want the price of medications and healthcare to  
4 rise, which is an inflammatory claim that has no place in litigation, especially in  
5 light of the current debate on healthcare reform. For these reasons, this argument  
6 should not be mentioned or referenced in front of the jury as it will greatly  
7 prejudice Plaintiff. This motion was previously brought in a similar case and  
8 granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al. v.*  
9 *Novartis Pharm. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct. New  
10 Jersey).

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12       **D. Any comment or personal anecdote from any witness or lawyer for**  
13 **the Defendant about themselves, or family members who have used Aredia,**  
**Zometa, or any type of bisphosphonate.**

14

15       Such evidence is irrelevant, hearsay, and undeniably prejudicial. *See* F.R.E.  
16 402-403. These emotional stories cannot be verified and will inappropriately sway  
17 the sympathies of the jury. This motion was previously brought in a similar case  
18 and granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al.*  
19 *v. Novartis Pharm. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct.  
20 New Jersey).

21       **E. Any mention of a purported “litigation crisis”, “lawsuit crisis”,**  
**“lawsuit abuse”, or similar terms or phrases.**

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23       Such argument is irrelevant, as it does not make the existence of any  
24 consequential fact more or less probable. *See* F.R.E. 401-402. Any comment  
25 would confuse and mislead the jury and waste the court’s time. *See* F.R.E. 403.  
26 Moreover, such argument is highly prejudicial and calculated to inflame the jury.  
27 *See* F.R.E. 403.

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1        Such an argument by the defense would be akin to commenting on the  
2 legitimacy of this and other lawsuits, suggesting to the jury that this lawsuit is  
3 groundless or part of some societal problem. Such argument would suggest to the  
4 jury that siding with Novartis in this case would somehow make up for a general  
5 overabundance of lawsuits brought in this country, which is an inflammatory claim  
6 that has no place in litigation. Such information would only be used by Defendant  
7 in an attempt to play to the jurors' opinions on tort reform, or lawyers as  
8 professionals. For these reasons, this Court should preclude this argument from  
9 being mentioned or referenced in front of the jury as it will cause great prejudice to  
10 Plaintiff. This motion was previously brought in a similar case and granted by that  
11 court. *In re: Aredia® and Zometa® Litigation (Bessemer et al. v. Novartis Pharm. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct. New Jersey).  
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14        **F. Any comment, evidence, testimony, inference, or document  
15 mentioning that state warning defect or failure-to-warn laws pressure drug  
16 manufacturers to add unsubstantiated, false, or invalid warnings in order to  
17 avoid lawsuits.**

18

19        Such argument is irrelevant, as it does not make the existence of any  
20 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this  
21 argument constitutes unsupported speculation, and is likely to involve matters  
22 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any  
23 comment on these matters would confuse and mislead the jury and waste the court's  
24 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and  
25 calculated to inflame the jury. *See* F.R.E. 403.

26

27        Further, such information would only be used by Defendant in an attempt to  
28 play to the jurors' opinions on tort reform, or lawyers as professionals. It is  
unnecessary information that will only waste the court's time and confuse the jury.  
For these reasons, this argument or comment must not be mentioned or referenced

1 in front of the jury as it will greatly prejudice Plaintiff. This motion was previously  
2 brought in a similar case and granted by that court. *In re: Aredia® and Zometa®*  
3 *Litigation (Bessemer et al. v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case  
4 No. 278 MT) (Sup. Ct. New Jersey).

5

6 **G. Any comment, evidence, testimony, inference, or document**  
7 **mentioning that state tort law undercuts the FDA's mission to provide only**  
**scientifically valid warnings.**

8

9 Such argument is irrelevant, as it does not make the existence of any  
10 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this  
11 argument constitutes unsupported speculation, and is likely to involve matters  
12 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any  
13 comment on these matters would confuse and mislead the jury and waste the court's  
14 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and  
15 calculated to inflame the jury. *See* F.R.E. 403.

16 Further, such information would only be used by Novartis in an attempt to  
17 play to the jurors' opinions on tort reform, or lawyers as professionals. It is  
18 unnecessary information that will only waste the court's time and confuse the jury.  
19 For these reasons, this argument or comment must not be mentioned or referenced  
20 in front of the jury as it will greatly prejudice Plaintiff. This motion was previously  
21 brought in a similar case and granted by that court. *In re: Aredia® and Zometa®*  
22 *Litigation (Bessemer et al. v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case  
23 No. 278 MT) (Sup. Ct. New Jersey).

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25 **H. Any comments or argument that the absence of any evidence of**  
**FDA sanction is proof of full and timely compliance with FDA regulations.**

26

27 In a previous trial for a case similar to the instant case, in closing, counsel  
argued:

1 And we think that there is no evidence whatsoever in this record--in  
2 fact, the evidence is all in Novartis's favor that Novartis has never  
3 been cited for any problem with respect to the regulatory requirements,  
labeling and otherwise, included for the marketing and use of Zometa  
in cancer patients in the United States.

4 And there has been no testimony from anyone in this trial that even  
5 suggests that the FDA was unhappy with Novartis's pharmacovigilance  
compliance, as you heard one of the witnesses refer to. That witness  
was Dr. Parisian.

6 *Stevens* trial transcript, Closing Statement of Joe Hollingsworth, Esq.,  
7 1720:3-14, *Stevens v. Novartis Pharms. Corp.*, No. DV-08-100 (Mont. 4<sup>th</sup> Jud. Dist.  
Ct. Oct. 20, 2009) (attached as **Exhibit 1**).  
8

9 Such argument is irrelevant, as it does not make the existence of any  
10 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this  
11 argument constitutes unsupported speculation, and is likely to involve matters  
12 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any  
13 comment on these matters would confuse and mislead the jury and waste the court's  
14 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and  
15 calculated to inflame the jury. *Id.* This motion was previously brought in a similar  
16 case and granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer*  
17 *et al. v. Novartis Pharms. Corp.*), MID-L-1835-08-MT (Case No. 278 MT) (Sup.  
18 Ct. New Jersey).

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20 **I. Any comment or testimony concerning any current clinical trials  
or expansion of its indications.**

21  
22 Mrs. Georges ceased taking any bisphosphonate in 2005. No indication  
23 requested or approved after this date has any bearing whatsoever on the facts at  
24 issue in this case. Such argument is irrelevant, as it does not make the existence of  
any consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this  
25 argument constitutes unsupported speculation, and is likely to involve matters  
26 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any  
27 comment on these matters would confuse and mislead the jury and waste the court's  
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1 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and  
2 calculated to inflame the jury. *Id.*

3

4 **CONCLUSION**

5 For the foregoing reasons, Plaintiff Adriann Georges respectfully requests  
6 that this Court preclude discussion of the issues addressed herein by Novartis, their  
7 witnesses, and their counsel at all times the jury is present.

8

9 DATED: October 23, 2012

GIRARDI | KEESE

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/s/ John A. Girardi

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